

49
AN EXPOSITION OF THE LAW,

ACCOMPANIED BY REMARKS

ON THE

Rights and Duties,

OF

MASTER AND APPRENTICE.

WRITTEN AND PUBLISHED

IN THE EXPECTATION THAT IT MAY BENEFIT THOSE TO WHOM IT IS DEDICATED,

The MASTERS and APPRENTICES of the

Commonwealth of Pennsylvania.

BY JOHN BINNS,

One of the Aldermen in, and for, the City of Philadelphia.

Philadelphia:

PUBLISHED BY NICKLIN AND JOHNSON,

AND FOR SALE AT ALL THE BOOKSELLERS' STORES.

1839.

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and T. JOHNSON, in the Clerk's office of the District Court for the Eastern District
of Pennsylvania.

ADVERTISEMENT TO THE SECOND EDITION.

THE reception which the first edition of this Essay met with from the public has been gratifying to the writer. Professional gentlemen, whose approbation is much valued, have spoken of it in such language as to flatter him, while the conductors of the public press have been pleased, without exception, to notice it in such terms as has almost persuaded the writer that he has accomplished that which he desired to accomplish. To these general testimonials he feels called upon to add the particular and kind expressions which associated strangers and high authorities have bestowed on this publication. The writer cannot forbear to do himself the credit to submit the unanimous opinion of the Board of Managers of the Apprentices' Library Company of Philadelphia and a letter from Chief Justice Gibson, of Pennsylvania. In making public these acknowledgments and testimonials however soothing to his own feelings, the writer is more moved by a desire to ensure to the Essay a general circulation than by any other consideration.



PROCEEDINGS OF THE BOARD OF MANAGERS OF THE APPRENTICES'

LIBRARY COMPANY.

At a meeting of the Board of Managers of the Apprentices' Library Company" held 5th Mo. 10th, 1836, the following Preamble and Resolution, were adopted;

Whereas a Publication on the "Rights and Duties of Master and Apprentice" by one of the Aldermen of Philadelphia, has recently been presented to this Company by the Author; and as the approbation of this Board (if the work be found worthy its approval) may have much influence in extending its circulation and promoting its usefulness, Therefore *Resolved*, that a committee of three be appointed carefully and deliberately to examine the same, and report whether in their opinion any, and if any, what order would be proper for this Board to take in relation thereto.

The Chairman appointed to that service Townsend Sharpless, Philip Garrett, and Charles Roberts, who at a subsequent meeting held 6th mo. 14th, 1836, made the following Report, and recommended the adoption of the Resolution hereto annexed; which was *unanimously* agreed to, and the Secretary directed to furnish an attested Copy thereof to the Author.

The Committee to whom was referred the Publication on the "Rights and Duties of Master and Apprentice by one of the Aldermen of Philadelphia," having carefully examined the same, feel much pleasure in bearing their testimony to the excellent and pertinent manner in which the subject has been treated. They are of opinion that an extensive circulation of the work would be of great benefit both to Master and Apprentice, who will have cause to feel under obligation to the Author, for having thus contributed to the promotion of their interests.

The Committee after due consideration recommend the adoption of the following:

Resolved, that this Board highly approve of the Publication, entitled "Rights and Duties of Master and Apprentice, by one of the Aldermen of Philadelphia," and recommend it to the attentive perusal of those to whom it is addressed; believing that it is calculated to promote harmony and good feeling, and contribute to the real interests of both parties.

CHARLES ROBERTS,
PHILIP GARRETT,
TOWNSEND SHARPLESS, } *Committee.*

Extract from the Minutes.

BENJ. E. VALENTINE, Secretary.

To JOHN BINNS, Alderman.



A LETTER FROM THE CHIEF JUSTICE OF PENNSYLVANIA.

Philadelphia, 9th of April, 1836.

Dear Sir,

I HAVE perused with attention, and much satisfaction, your Exposition of *the Law of Master and Apprentice*; and I rejoice to see the subject treated in a manner so masterly, as regards both the *legal*, and the *moral* duties incident to the relation.

The Law of the contract is accurately stated; and the treatise must render valuable assistance, as well to the magistrate whose authority is invoked, as to those who are professionally consulted. It is however in its faithful representation of the social and domestic duties of the relation, and its wholesome inculcation of their importance, that its greatest usefulness will be practically felt. It will give me pleasure to find your Exposition become the *Text Book* of the Magistrate, and to see it in the hand of every one whose interests or duties are involved in the subject.

Very respectfully Dear Sir,

Your Obedient Servant.

JOHN B. GIBSON.

To Mr. ALDERMAN BINNS

This edition has been carefully revised and such improvements made as experience has suggested. Care has been taken to introduce such regulations as the General Assembly of Pennsylvania have enacted, and such decisions of the Courts of Justice as have been made, since the first edition was put to press. A few decisions of the English Courts, on general principles are introduced, care being taken to distinguish each of them by the prefix of an asterisk(*). It is believed that the references may in all cases be relied on as accurate.

AN APOLOGY FOR THIS PUBLICATION.

THE writer of the following Essay, has long been impressed with the importance of the relationship and mutual interests which exist between MASTER and APPRENTICE. The knowledge acquired in the discharge of official duties probably originated, but certainly has confirmed, the belief that the publication of an Essay on this subject could not fail to be productive of good. These convictions and a desire to obtain information, has induced the writer to make many inquiries, and of various persons, as to the existence of such an essay. There are many essays on the Rights and Duties of Husband and Wife—Parent and Child—Guardian and Ward—Master and Servant, &c., but it is believed that there is no essay on *Master and Apprentice*. To supply this want the following pages have been written. If they are not what they ought to be, they may induce some other person, better qualified, to undertake the task. No one can undertake it who will bring to it better dispositions, or a more sincere desire, to promote the welfare of those to whom this essay is dedicated.

As it is hoped that these pages will be read by Apprentices as well as Masters, by young persons as well as by those more advanced in life, they are written in a plain and familiar style. If they shall be read with as sincere a desire to be benefitted, as they have been written with a desire to benefit, they cannot but be useful.

It may be proper to remark that the law as laid down, for Masters, is strictly and to the letter, in all similar cases, the same for Mistresses.

It has not been thought adviseable to encumber these pages with legal forms, such as Notices, Warrants, Docket Entries, Commitments, &c. such information was not contemplated in *this* publication.

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AN EXPOSITION OF THE LAW,
ACCOMPANIED BY
REMARKS, ON THE RIGHTS AND DUTIES OF
Master and Apprentice.

“ APPRENTICES are a species of Servants, and are usually bound “for a term of years, by deed indented, or indentures, to serve “their Masters, and be maintained and instructed by them.” 1 *Blackst.* 425.

This definition is reasonably correct, so far as it goes, but it does not go far enough to give a clear idea of what an apprentice is. It exhibits him in only one relationship to his master, whereas there is another, nearly equally important, with that in which he is above exhibited. He is not only a species of servant, but he is also a species of relation. The law of England, as well as that of Pennsylvania, considers the master as standing in the place of the parent, who, for a certain length of time, has devolved many of his duties upon the master, from whom, the law, if called upon, will exact their discharge. It will also exact from the apprentice, in all places, and at all times, during his apprenticeship, that obedience and respect, to his master, which it exacts from a son to a father. On this important relationship, between the master and apprentice, we shall hereafter take occasion further to remark.

The obligations which exist between master and apprentice, are various and of great importance, not only to the parties, but to the public. “Apprenticeships,” says Blackstone, “are useful to the “Commonwealth by the employing of youth, and learning them to “be early industrious.” As well, he might have added, as by the instruction given to him while he is an apprentice, so that he shall, when free—that is when the period for which he shall have been bound apprentice, shall have expired—be found not only in habits of industry, but thoroughly instructed, and skilful in executing the various branches of the trade or mystery to learn which he had been bound apprentice. “Indentures of apprenticeship,” says Judge “Read, are *personal* contracts, authorized by law, in which the conditions and terms are expressed. Any violation of these terms “renders the aggressor liable, either to a suit at law, or to a summary process provided in our acts of assembly.” 1. *Penn. Black.* 207.

The general interest felt in the fulfilment of the covenants of the Indenture has been manifested, in various countries, by their

legislatures making such provisions as shall induce apprentices to serve a certain required number of years; in England it is seven years. To ensure this length of service and thus secure skilful and expert artists and workmen, those who have not served the length of time prescribed, are deprived of the enjoyment of many important privileges. "Persons serving seven years, as apprentices to any trade, have an *exclusive* right to exercise that trade in any part of England." I. *Blackst.* 427.

Again, "If indentures of apprenticeship are for a less term than seven years, it has been held that they may at any time be avoided by the parties, and no person whatsoever is bound by any covenants in them." I. *Anst.* 256.

Such is the law, and such its objects in that country whence we have derived no inconsiderable portion of our institutions and laws. Such, however, is not the law in Pennsylvania. Here, the apprentice may be bound for any length of time which may be agreed upon by the parties, provided that a female shall not be bound longer than she shall attain the age of eighteen, nor a male longer than he shall attain the age of twenty-one, years. The writer has frequently remonstrated with parents and warned them of the impolicy and evil consequences of binding children for so short a period that they become free, and have the cares of the world upon them, before they have attained the age of twenty-one; while they are yet minors and incapable of making any legal contract. As a magistrate the writer has, at all times, when satisfied that the child was to be so bound as to make him free before he was of age, refused to execute an indenture. It is believed that a similar course of conduct in other magistrates would benefit not only masters and apprentices, but the community. It would be a matter of curious, and perhaps not unimportant, speculation to inquire how far the system laid down in England, as to apprentices, so long ago as the reign of Elizabeth, has contributed to make that country, and to continue it, for so long a time, one of the greatest manufacturing, agricultural, and commercial nations in the world.

Parents, from ignorance of their exact age, as well as from mistaken motives and feelings sometimes, at the binding of their sons, represent them, and have them bound, as being older than they really are, and thus cause their Indenture of Apprenticeship to expire, and consequently the apprentice to become his own master, before he has attained the age of 21, and while he is yet, in the eye of the law, an infant. Such bindings, in a majority of cases, are not only not a benefit, but are a serious disadvantage, to the youth they are meant to serve, who is thus, prematurely and inexperienced, called upon to take his station among men, and to discharge the duties and assume the responsibilities of manhood.

Before we enter upon any inquiry—to be sustained by the authority of legal decisions—as to the mutual rights and duties of master and apprentice, we would submit a few general remarks. A great and leading object in the binding of an apprentice, is to

have him taught some trade, or mystery, which may thereafter enable him to earn his own livelihood, and to become a useful member of society. A principal inducement to the master to take an apprentice is, the expectation, that while he is yet an apprentice, he will, by his skill and labour, remunerate the master for the money and time he may expend upon the apprentice, and for the instructions he may bestow upon him. To enable the master to compel the apprentice, if necessary, to do his work in a proper manner, and in sufficient quantity, and to perform his other duties, he is, by acts of assembly, by common law, and by the general custom of trade, armed with no inconsiderable authority. The apprentice, and his interests, are also specially regarded, and in the same way provided for. The act of binding an apprentice includes a surrender, by the parent, of his rights and authority, for a certain, and generally no inconsiderable portion of time, over his child, and a delegation of them to a third person, the master, who is often but slightly known when the binding takes place. It would be well if Parents and Guardians would make it a point, nay, feel it a duty, to acquire a knowledge of the morals, habits and manners of the person to whom they contemplate to commit the care of a child, as well as of his ability to instruct him in the trade to be taught, before they execute an Indenture of apprenticeship. It would also be well if masters would acquire a knowledge of the disposition capacity and habits of a youth before they assume the responsibility of qualifying him to be a useful member of society. It is a good rule to take a boy on trial for a few weeks. By the Indenture the master is vested with the authority, and during the apprenticeship, assumes the responsibility, and takes the place of the parent. This view of the relationship between a master and his apprentice, is of more importance than persons are in the habit of considering it, and would, if properly regarded, give rise to the cultivation of the kindest feelings, and the promotion of the best interests of the parties. If there be any one thing which pre-eminently causes bickerings and disputes about trifles, and all the inconveniences and discomforts which arise from such disputes, it is a forgetfulness of this family relationship and a disposition in the parties to do no more than the terms of the Indenture may be supposed absolutely to require.

This disposition frequently manifests itself in the apprentice, by a refusal to do some trifling thing which he is asked to do, by his master's wife or housekeeper, such as going of an errand, fetching a bucket of water, or splitting, or bringing up, an armful of wood. The wife, or the housekeeper, as the case may be, complains to the master of this refusal, in terms more or less embittered, according to her temperament; the master reprimands—or if the conduct of the boy has been highly coloured and represented as having been accompanied with rude language—perhaps the apprentice is chastised, and his apology is, that what he was asked to do is none of *his* business. Unkind feelings and dispositions grow out of such

occurrences, and, too often, remain, even when the circumstances which gave them birth are forgotten—to the mutual disadvantage of the parties, even to the period when the Indenture between them shall terminate.

If, instead of a refusal, the apprentice, in the case supposed, had done what was required, he would have ensured the good will of the wife of his master or of his housekeeper, as the case might be, and she would not let his readiness to oblige her go unrewarded. She would take, or make, occasion to contribute to his comfort, and to speak well of him; and thus instead of anger and ill will, the best dispositions would be cultivated, and the parties eventually benefitted not merely to the termination of their Indentures, but often to the end of their lives. Masters too, occasionally, and arbitrarily, exact, and thus lay a foundation on which complaints and grievances are built up, and discontents and quarrels arise, to the serious injury of both parties. To bear and forbear, is an admirable rule which would, if more frequently carried out, bring forth the best fruits.

The master should never forget that besides being bound to teach the apprentice his trade, he has taken upon himself, for a time, the obligations of a father, and the apprentice should always regard him in that character. Such recollections and feelings would be of incalculable value to them both. Magistrates are frequently called upon to give advice to both masters and apprentices. It is a good rule *always* to require to see the Indenture between the parties before any advice shall be given, either to the one or the other.

It sometimes, indeed, not unfrequently, happens, that persons in the employ of the master, for selfish purposes, sow the seeds of discontent in the minds of apprentices, and injuriously influence their conduct.

This is done in various ways; sometimes by insinuations, that the master is harsh or unkind; that more is required from the apprentice than he ought to do, and by artful representations as to the amount of wages earned by the apprentice as clear profit to the master—omitting all reference to the costs and charges incurred by the master on account of the apprentice, or to the trade or mystery, the knowledge of which he is acquiring—and the means he is thus accumulating to make himself comfortable, respectable and independent. It is the duty, as it is assuredly the interest, of the master, so soon as he discovers in his apprentice, grumblings and complainings, for little or no apparent cause, to endeavour to ascertain whence they spring, and if he shall find they have arisen from the sources here suggested, the *cause* should be removed, and the apprentice remonstrated with, in a mild but firm manner. If this be done, as soon as the evil is discovered, it will save heart-burnings and jealousies, and the growth of bad feelings, and greatly promote the interests of both parties. The law looks upon the master as bound not only to fulfill the special and particular covenants of the Indenture, but it expects, and if called upon will exact, from him, ac-

according to his opportunities and his judgment, a general parental superintendence of the conduct of the apprentice, and the bringing of him up in habits of industry and morality. The imposing of these duties on the master, is deemed essential to the comfort and happiness of the parties, and the well being of the community

A fruitful source of evil is the permitting apprentices to be from home until late hours at night. The act of requiring, and without special permission, always insisting upon the apprentice being at home at a certain and an early hour, will do more for the promotion of the welfare and the interests of the parties than perhaps any other regulation. It will be found mutually and greatly beneficial to the master and apprentice. The master who lays down and strictly exacts obedience to such a rule of conduct, will feel the propriety, nay the necessity of, in his own proper person, setting a good example, and doing himself what he requires to be done by others. It will be seen, when the legal authorities which follow are read, that vicious conduct in the master, or his exacting from the apprentice the performance of acts contrary to good morals, are regarded as such breaches of the Indenture, and of his duty, as will warrant the discharge of the apprentice. It will also be found that although the law arms the master with authority to enforce his commands by correcting, and with moderation chastising his apprentice, yet it does not permit him to depute that authority to any other person.

In order that it may the more clearly appear, what were the evils to be remedied, when the act of assembly was passed in Pennsylvania in relation to apprentices, it is thought adviseable to republish the Preamble to the act of September 29th, 1770. *Purd. ed.* 1830, p. 41. "An act for the regulation of Apprentices within *this Province*."*

"Whereas, great mischiefs and losses have been sustained by the
 "masters and mistresses of apprentices within this province, for
 "want of some law to regulate their conduct and behaviour during
 "their apprenticeships, to prevent their absenting themselves from
 "their said master's or mistress's service without leave, to punish
 "them for any disorderly or immoral behaviour, and to make the
 "covenants between them mutually obligatory. For remedy
 "whereof, Be it enacted," &c.

The most careless and cursory reader of this preamble, can hardly fail to remark, how strongly it recognizes and enforces the household and family relationship existing between the master and apprentice. Although it does not say one word as to the main duty of the master, that of instructing his apprentice in the trade in

* It is a curious fact, that in Purdon's editions of the Laws, of 1830 and 1824, which are the only editions I have examined, the title of this act is erroneously printed. It is in these words—"An act for the regulation of Apprentices within *this Commonwealth*." As the act had been passed before the Declaration of Independence, I was surprised how the word "Commonwealth" should have been thus appropriated by the *Provincial Assembly*. On examining the very valuable edition of the Laws of Pennsylvania, edited by Charles Smith, Esq. Vol. I, p. 309, I found the title of the act in the words above printed

which he is bound to instruct him, yet does it announce the important fact that the law was passed to arm "Masters and Mistresses" with authority "to regulate the conduct and behaviour" of their apprentices "during their apprenticeship" and "to punish them for any disorderly or immoral behaviour."

OF THE TIME APPRENTICES ARE TO SERVE.

"SEC. I. All and every person or persons that shall be bound by Indenture* to serve as an apprentice in any art, mystery, occupation or labour, with the assent of his, or her parent, guardian or next friend, or with the assent of the overseers of the poor,† and approbation of any two Justices, although such persons, or any of them, were, or shall be within the age of twenty-one years, at the time of making their several Indentures, shall be bound to serve the time in their respective Indentures contained, so as such time or term of years of such apprentice, if a female, do expire, at or before the age of eighteen years, and if a male, at or before the age of twenty-one years, as fully, to all intents and purposes, as if the same apprentices were of full age at the time of making the said Indentures; any law, usage or custom to the contrary notwithstanding."

"As if the said apprentice were of *full age*, at the time of making the said Indentures." By the common law, after arriving at full age, a man may bind himself apprentice, as he may enter into any other legal covenant, and be bound for its fulfillment.

This section provides that all *infants*, (that is persons under the age of 21 years,) "*bound by Indenture*" with the assent of the persons therein described, "shall be bound to serve the time in their respective Indentures contained, as fully, to all intents and purposes, as if the said apprentice had been of full age, at the time of making the said Indentures." It also declares, that no infant, bound by Indenture, however formally and legally executed, if a female, shall be compelled to serve longer than she shall have attained "*the age of eighteen years*," nor, if a male, longer than he shall have attained "*the age of twenty-one years*."

It not unfrequently happens, from ignorance of the age of the apprentice, and occasionally from design, that the apprentice attains to "*full age*" before the term for which he was bound by Indenture has expired. What are the consequences? The apprentice on attaining full age, promptly claims his freedom; the master resists and appeals to his Indenture. He is indignant at what he regards as a fraud, and the apprentice is impatient to enter the world on his own account. These feelings manifest themselves sometimes in

* Formerly, when there were more parties than one to a deed, and each of the parties had a copy, each copy was cut, or indented in acute angles, like the teeth of a saw, on the top or side, to tally, or correspond with the other; which deed so made, says Blackstone, is called an Indenture.

† The Managers of the Alm's house have no power to bind a child who has no legal settlement in their district. 1 Browne's Rep. 197.

angry and passionate words, which lead to unpleasant and unprofitable consequences. Whenever, in such a state of things, a difference of opinion exists as to the facts, we would recommend that the parties shall either go to the magistrate, before whom the Indenture had been executed, or to some judicious common friend, submit the evidence of the case, and be governed by his opinion as to the law, and the facts. Above all things let judgment and prudence, and not feeling and passion, govern the parties. The former are safe, but the latter are dangerous counsellors or guides. The one leads to good and the other to evil.

Circumstances over which the parties have no control, prevent young men who desire to learn a trade, but who have attained so near to the age of 21, at which the Indenture by which a minor is bound *must* expire, that the intermediate time is not thought sufficient to learn the trade they wish: nor can a proper master be found to take them for so short a term as they could legally be bound to serve. The writer, in such cases, has always pursued the following course, believing it best adapted to secure the rights, enforce the duties and promote the interests of the parties. He has, in the first instance, according to the above section of the act of 1770, bound the parties by Indenture; which Indenture, as has already been stated, is sufficient to bind the apprentice until he shall become of full age, but no longer. Immediately on the execution of the Indenture, an agreement is drawn up, in which the "Parent, Guardian or next friend," or any other person who shall be satisfactory to the master, with whom he is to covenant, that the apprentice shall faithfully serve for such *further* time as shall be agreed upon, *after the expiration of the term for which he shall have been bound by Indenture.*

It is thought proper here to submit a copy of the Indenture and agreement, such as the writer has usually acted upon under the circumstances stated; taking care in all cases to read the Indenture and Agreement to the parties. Although this Indenture will be found to differ in some essential particulars, and to embrace some important provisions not to be found in any other printed form of Indenture, yet it will not be doubted, that this form is in strict accordance to law, and the decisions of our courts.

COPY OF AN INDENTURE OF APPRENTICESHIP.

Correction.—A Master may, by law, correct and chastise his apprentice for neglect or other misbehaviour, so that it be done with moderation; but he cannot depute another person to give such correction.

Partners.—One partner has no power to execute an Indenture for his co-partner.

Assignment.—The assent of all the parties is necessary to give validity to an assignment of an Indenture of apprenticeship, and must be certified by the Justice, or at least expressed in writing before him and attached to the instrument, at the time of such assignment. Parol proof, afterwards, will not suffice.

Cancelling.—An Indenture of apprenticeship may be cancelled by the consent of all the subscribers to it.

THIS INDENTURE witnesseth, that *A. B.* with the consent of *his Father C. D.* hath put himself, and by these presents, and for good causes doth, voluntarily, and of his own free will and accord, put himself apprentice to *E. F.* to learn the art, trade and mystery of a *Glass Cutter*, and after the manner of an apprentice to serve the said *E. F.* from the day of the date hereof, for and during, and to the full end and term, of *two years from the 27th day of April 1839*, next ensuing. During all which time, the said apprentice doth covenant and promise, and is hereby bound—that he will use the utmost of his endeavours to learn the said art or mystery—that he will serve his master faithfully; keep his secrets, and obey his lawful commands—that he will do him no damage, nor see it done by others, without giving him notice thereof—that he will preserve and not waste his goods, nor lend them unlawfully—that he will not contract matrimony within the said term—that he will not play at cards, dice, or any other unlawful game—that he will neither buy nor sell, without license from his master—and that he will not absent himself day nor night from his master's service, without his leave nor frequent taverns or play-houses; but that in all things he will behave himself as an honest and faithful apprentice ought to do, during the said term.

And the said master on his part doth covenant and promise, and is hereby bound to the best of his judgment and opportunities, to act as a parent to the said apprentice, and to use the utmost of his endeavours to teach, or cause to be taught or instructed, the said apprentice in the art trade or mystery of a *Glass Cutter*, and that he will procure and provide for him sufficient meat, drink lodging and washing, fitting for an apprentice, during the said term; and will give him *at the rate of thirty dollars each and every year, payable quarter-yearly.*

And for the true performance of all and every one of the covenants and agreements aforesaid, (all of which have been before signing read over to them) the said parties bind themselves each unto the other, firmly by these presents.

IN WITNESS WHEREOF, the said parties now interchangeably set their hands and seals hereunto. Dated the *twenty-seventh* day of *October*, in the year of our Lord one thousand eight hundred and thirty-eight.

Scaled, delivered and acknowledged before }
the subscriber, one of the Aldermen in, }
and for, the City of Philadelphia.

Alderman.

A. B. [SEAL.]

C. D. [SEAL.]

E. F. [SEAL.]

Agreement made between A. B. and E. F. of the City of Philadelphia.

Whereas, by an Indenture made and executed this day *October 27th 1838*, *C. D.* was, with the consent of his Father *E. F.* bound apprentice to *A. B.* to learn the art trade or mystery of *Glass Cutting*, *C. D.* to serve the said *A. B.* three years from the day of the date thereof: And whereas,

the parties to the said Indenture are desirous that the said *C. D.* shall be thoroughly instructed and made a skilful workman in the said art of *Glass Cutting*, but are satisfied that three years are not a sufficient length of time for the said *C. D.* to acquire the knowledge that is required, and whereas on the 27th of October, 1841, when the said Indenture shall expire, the said *C. D.* will have attained the full age of 21 years, and cannot at this time, be bound to serve for a greater length of time than is declared in the said Indenture of Apprenticeship: And whereas, the said *E. F.* the Father of *C. D.* being moved by consideration of affection for his son, the said *C. D.*, and entertaining an anxious wish that he should thoroughly and in all its branches, understand the said art of *Glass Cutting*, doth hereby covenant and agree with the said *A. B.* that after the expiration of the said Indenture, the said *C. D.* shall continue, as an apprentice, to serve the said *A. B.* for *two years*, he, the said *E. F.* covenanting and agreeing to continue to fulfil for the said Two Years, which will end on the 27th of October, 1841, all the duties of a Master to the said *C. D.*, and in addition to the covenants of the said Indenture to pay him at the rate of *eighty* dollars a year payable quarter-yearly; and the said *E. F.* covenants and agrees that if the said *C. D.* shall not faithfully fulfil the agreement herein entered into, that then he the said *E. F.* will pay to the said *A. B.* the sum of *two hundred* dollars, good and lawful money of the United States.

Witness our hands and seals at Philadelphia, the 27th of October, 1838.
Witness at Signing, &c.

C. D.
G. H.

A. B. [SEAL.]
E. F. [SEAL.]

CITY OF PHILADELPHIA, ss.

On the 27th day of October, 1836, personally appeared before the subscriber, one of the Aldermen in and for the said City, the above named *A. B.* and *E. F.*, and severally acknowledged the above instrument of writing to be his act and deed, and desire that the same may be recorded as such according to law.

In testimony whereof, I have hereunto set my hand and seal at Philadelphia, the day and year first above mentioned.

Aldn. [SEAL.]

OF THE REMEDIES PROVIDED FOR MISCONDUCT.

SECT. II. "If any master or mistress shall misuse, abuse or evilly treat, or shall not discharge his, or her, duty towards his or her apprentice, according to the covenants in the Indentures between them made; or if the said apprentice shall abscond or absent him or herself from his or her master's or mistress's service without leave, or shall not do and discharge his or her duty to his or her master or mistress, according to his or her covenants aforesaid, the said master or mistress, or apprentice, being aggrieved in the premises, shall or may apply to any one Justice of the Peace of any county or city where the said master or mistress shall reside, who, after giving notice to such master or mistress or apprentice, if he or she shall refuse or neglect to appear, shall thereupon issue his warrant for bringing him or her, the said master, mistress or apprentice before him, and take such order and direction between the said master or mistress and apprentice, as the equity and justice of the case shall require; and if the said Justice shall not be able to

settle and accommodate the difference and dispute between the said master or mistress and apprentice, through a want of conformity in the master or mistress, then the said Justice shall take a recognizance of the said master or mistress, and bind him or her over to appear and answer the complaint of his or her said apprentice, at the next county court of quarter sessions to be held for the said county or city, and take such order with respect to such apprentice, as to him shall seem just; and if through want of conformity in the said apprentice, he shall, if the master or mistress or apprentice request it, take a recognizance of him or her, with one sufficient surety, for his or her appearance at the said sessions, and to answer the complaint of his or her said master or mistress, or commit such apprentice, for want of such surety, to the common gaol or work-house of the said county or city respectively; and upon such appearance of the parties, and hearing of their respective proofs and allegations, the said court shall, and they are hereby authorized and empowered, if they see cause, to discharge the said apprentice of and from his or her apprenticeship, and of and from all and every the articles, covenants and agreements, in his or her said indenture contained, the said indenture of his or her said apprenticeship, or any law or custom to the contrary, notwithstanding, but if default shall be found in the said apprentice, then the said court is hereby authorized and empowered to cause, if they see sufficient occasion, such punishment, by imprisonment of the body and confinement at hard labour, to be inflicted on him or her, as to them in their discretion, they shall think his or her offence or offences shall deserve."

"*Shall thereupon issue his warrant,*" &c. It is evident from the wording of this section, that on complaint being made, "due notice" must be given by the magistrate, to the party against whom the complaint shall have been made. In the notice to be sent by the Justice, the complaint made should be stated, that the parties may come prepared if necessary, with witnesses to rebut it; and a time and place should be appointed *when*, and *where*, the parties shall appear. As such inquiries usually make known some of the domestic concerns of the master's family, as well as develope the feelings of those interested and as the magistrate has the appointment of the *time*, it is recommended that it should always be that time when the least possible number of uninterested persons may be expected to be present. The office of the Justice is doubtless the proper *place* of inquiry. If the party notified, shall neglect or refuse to appear, at the time and place stated in the notice, and the service of the notice shall be proved to the satisfaction of the magistrate, then, but not till then, he shall "issue his warrant."

When the parties do appear, whether by notice or warrant, a delicate and important duty is to be discharged by the magistrate. He is, in such cases, especially, so far as in him lies, to prevent his feelings from in any way influencing his judgment in favour of either of the parties. When the apprentice is young, it is particu-

larly desirable that his "Parent, Guardian or next Friend" should be present at the inquiry; it is indeed desirable to have them present, at all times, when such inquiries are going on. It too frequently happens that the parties act under the influence of passion. To calm that passion, and with mildness and firmness to point out, to the parties, their duty, and if possible persuade them to walk in its paths, is one, and not the least, of the many important duties which every magistrate is bound to discharge. All other means should be tried before the apprentice shall be committed to prison; and when the necessity of the case and the obstinacy of the apprentice closes every other door, care should be taken to write on the commitment, a request that he shall be kept by himself, and not put in company with any other prisoner. Imprisonment, however, is by all possible means to be avoided. It is, and it should be regarded as the last resort. It stigmatizes the boy; it sinks him in the opinion of others; and, what is still worse, it sinks him in his own estimation. It is well to keep an open ear for the complaints of apprentices as well as those of masters: the result of such inquiries, the writer has no hesitancy in saying, are, in a large majority of cases, productive of advantages to both parties. Indeed, the interests of a master and his apprentice are so intertwined together, that what benefits the one cannot fail to benefit the other. If this truth was deeply impressed upon the minds of those whom it most concerns, it would be productive of an abundant harvest of good fruit.

"*Take such order with respect to the apprentice as to him [the Magistrate] shall seem just.*" Where it is shown that the apprentice has been severely beaten, or ill treated, and the magistrate binds the master to appear "at the next County Court of Quarter Sessions, to be held for the said County or City," in which he shall reside, application is usually made to the Justice, that in the mean time—between the binding over and the meeting of the court—the apprentice shall be delivered over to, and remain with, and in the care of his parents, &c.: not to be returned to his master until the court shall have heard the case and taken order on it. For many, and obvious reasons, such applications should be discountenanced and refused, unless the beating shall have been inflicted with an unlawful and dangerous weapon, or where from habits of intemperance, or the violence and indulgence of his passions, the master cannot, with safety, be intrusted with the apprentice. This is one of the many cases, in matters relating to master and apprentice, in which the magistrate must, with all prudence, yet with all firmness, exercise a sound discretion.

"*By imprisonment of the body.*" It appears to the writer, that the only punishment which the court is here authorized to inflict, bears, in many cases, as heavily upon the master as upon the apprentice. The innocent is punished nearly as much as the guilty. It is when the indenture is about to expire, that complaints multiply and assume a more serious character. The apprentice has ac-

quired or thinks he has acquired, a complete knowledge of his trade; his desire to become free, becomes more and more ardent, as he calculates, from week to week, how much money he earns, or presumes he earns, for his master; all of which he thinks, would be his own, if the indenture were at an end. These thoughts, unjust and ungenerous as they are, are frequently fostered by others, and beget a restlessness and dissatisfaction, which gives birth to complaints and inquiries before the courts. The result of such inquiries, however they may affect the interests of the master, fall but lightly on the apprentice. If default shall be found in him, the *only* punishment by law to be inflicted, is "imprisonment," by which the master loses all the money which the apprentice would have earned, during the term of the imprisonment; and the law provides no remuneration whatever. It is respectfully suggested, that this state of things calls for legislative interference, that justice may be done to the master.

"Take a recognizance of him or her." As a general principle, it is improper to bind an infant in a recognizance, but in this case the act makes it imperative on the magistrate to include the apprentice in the recognizance with the surety for his appearance. The Justice will observe another peculiarity in the provisions of this section of the act of assembly in reference to the recognizance to be taken under it. "The master or mistress" are not required to give any security for their appearance at court, except his or her own recognizance.

OF ABSCONDING APPRENTICES.

SECT. III. "If any apprentice of any of the arts, trades, mysteries, occupations or labour aforesaid, shall depart and abscond from his or her master's or mistress's service into any other county of this province, or into the city of Philadelphia, it shall and may be lawful to and for any Justice of the Peace of such county or city, to issue his warrant to any constable within his county or city, to apprehend, take and have the body of such apprentice before him, or some other Justice of his county; and upon such appearance, and hearing of the complaint and defence of the parties if default be found in the said apprentice, then and in such case, the said Justice of the Peace before whom such warrant shall be returned, shall commit him or her to the common gaol of the county, where his or her said master or mistress shall reside, unless he or she will consent to return home, or shall find sufficient surety to appear at the next sessions, to be held for the county where such master or mistress shall reside, and answer the complaint of the said master or mistress, and not to depart the same without leave."

"Into any other County." This section of the act of assembly, if construed strictly, and to the letter, would appear to give no authority to a Justice of the Peace "to issue his warrant" for any absconding apprentice, so long as he continued "in the county or

city" where his master or mistress may reside. Time and long practice, however, has given a different construction to the section, and the magistrates, in every part of the State, on the oath of the master or mistress, that his or her, apprentice has absconded from their service, issue a warrant for his apprehension, without inquiring whether the apprentice has, or has not, "gone into any other county or city." Any other construction than this would give facilities to runaway apprentices, which would be greatly injurious to the public interests as well as to that of the master and mistress, and consequently to that of the apprentice. By a statute of the State of Connecticut, if an apprentice run away from his master, he shall serve him treble the time of his absence.

PENALTIES ON HARBOURING RUNAWAYS.

"SECT. IV. If any person or persons whatsoever shall harbour, conceal or entertain any such apprentice, knowing him to be such, during the space of twenty-four hours, without his, or her, master's or mistress's consent, and shall not give notice thereof to his or her said master or mistress; every such person or persons offending in the premises, shall pay to the said master or mistress the sum of twenty shillings, for every day he shall so harbour, conceal or entertain such apprentice, to be recovered in a summary way, as debts under five pounds are by law directed to be recovered, *if the same shall not exceed five pounds*; if otherwise to be recovered by action of debt to be brought at the suit of the party injured, in any court of common pleas within this province."

"*Knowing him to be such.*" The gist of the offence in this case, is in the knowledge of the party who shall "conceal or entertain" the apprentice of another. It is therefore indispensable, in the party who shall bring suit to recover damages, to be able to prove that the person who concealed or entertained the runaway apprentice knew him to be such. If the amount claimed shall exceed five pounds, suit must be brought before the court of common pleas.

The following "Supplement to the act entitled an act for the Regulation of apprentices," was passed April 11th, 1799.

ABSCONDING APPRENTICES MADE LIABLE.

"SECT. I. If any apprentice shall absent himself or herself, from the service of his or her master or mistress, before the time of his or her apprenticeship shall be expired, without leave first obtained, every such apprentice, at any time after he or she arrives to the age of twenty-one years, shall be liable to, and the master or mistress, their heirs, executors or administrators, are hereby enabled to sustain all such actions and other remedies against him or her, as if the said apprentice had been of full age at the time of executing his or her indenture of apprenticeship."

We have not been able to find any case in which damages have been recovered under this section, although runaway apprentices are much more common than they ought to be. One of the most effectual preventives to runaway apprentices, is always in the power of the masters. If they will but be strictly honest and do as they would be done by, we should rarely indeed hear of apprentices absenting themselves from the service of their masters. Whenever a young man applies to a tradesman for employment, the person to whom he makes application, should inquire how, and where, the applicant had obtained a knowledge of the business. If the applicant does not produce his Indenture, or give other entire satisfaction in reply to these inquiries, he should be told that he is supposed to be a runaway apprentice, and that until that suspicion is wiped away, he can get no employment. The general adoption of such a course of conduct, would be for the general benefit, and would more effectually than any statutory provision, put an end to the practice, now much too common, of apprentices leaving the service of their masters.

SECT. II. "When any master or mistress shall die before the term of apprenticeship shall be expired, the executors or administrators of such master or mistress, provided the term of the Indenture, extend to executors and administrators, shall and may have a right to assign over the remainder of the term of such apprenticeship to such suitable person of the same trade or calling, mentioned in the Indenture, as shall be approved of by the court of quarter sessions of the county where the master or mistress lived, and the assignee to have the same right to the service of such apprentice as the master or mistress had at the time of his or her death; and also, when any master or mistress shall assign over his, or her, apprentice to any person, of the same trade or calling mentioned in the indenture, the said assignment shall be legal, provided the terms of the indenture extended to assigns, and provided the apprentice, or his, or her, parent or parents, or guardian or guardians, shall give his, her, or their, consent to such assignment before some justice of the peace of the county where the master or mistress shall live."

We shall give so many legal decisions on the subject of assignments, that we may safely refer to them as, with the above section, embracing all the law on this subject.

WHO MAY BIND, AND BE BOUND, APPRENTICE.

1. By an act passed by the General Assembly of Pennsylvania June 30, 1836, It is enacted in "Section 8, It shall be lawful for the overseers of any district, with the approbation and consent of two or more Magistrates, to put out, as apprentices all poor children, whose parents are dead, or by the said Magistrates found to be unable to maintain them, so as that the time or term of years of such apprenticeship if a male, do expire at or before the age of

twenty-one years, and if a female at or before the age of eighteen years."

The same act "Section 45," is in these words—The word "District" in this act shall be construed to mean "township" and "borough" and every other territorial or municipal division, in and for which officers charged with the relief and support of the poor are directed or authorized by law to be chosen, but nothing in this act contained shall be taken to repeal or otherwise interfere with any special provision made by law for any city, county, township, borough or other territorial or municipal divisions." The whole of the act from which the above sections are taken, may be found in the Pamphlet Laws for 1835-36, p. 539, and in the *fifth* edition of Purdon's Digest p. 819,

2. In the case of a *white* infant, it was determined that an Indenture to serve, *without learning any art, trade, occupation, or labour*, could not be supported either upon the principles of the common law, the act of 1700, or the custom of the country; that custom extending only to imported servants. 2 *Dall.* 198.

3. No instance I think can be found in any act of Assembly where the terms "servant" and "apprentice" are used as synonymous. 3 *Rawle*, 307.

4. Children may be bound apprentice to some useful trade, art, or mystery, but our courts have always frowned upon every attempt to bind them out as *servants*. *Ashm.* 263.

5. Housewifery is a mystery within the meaning of this act of Assembly. 1 *Browne*, 197.

6. The Orphan's Court, on request of executors, administrators, guardians or tutors, may order the binding or putting out of minors, apprentices to trades, husbandry, or any other employment as shall be thought useful. 1 *Sm. Laws*, 84, 311.

Extract from "An Act for Establishing Orphan's Courts," passed 27th March, 1713.

"SECT. XII. Provided always, that none of the said Orphans' Courts shall have any power to order or commit the tuition or guardianship of any orphans or minors, or bind them apprentice to any person or persons whose religious persuasion shall be different from what the parents of such orphan or minor professed, at the time of their decease, or against the minor's own mind or inclination, so far as he, or she, has discretion and capacity to express or signify the same; or to persons that are not of good repute so as others, of good credit and of the same persuasion may or can be found." *Purd. Ed.* 1830, p. 669.

Upon reflection it has been thought most advisable to publish this section *entire*; to show the rare tenderness and extreme care, taken of orphan apprentices, and the high respect for the rights of conscience which were entertained by our early legislators. The act from which the above section is extracted, was passed by the provincial legislature of Pennsylvania, so early as the 27th of

March, 1713—more than one hundred and twenty-six years ago. A decision under it by that able jurist, Chief Justice M’Kean, may be found in 1 *Dall.* 136. This section should impress apprentices with gratitude for the memory of the men who in so early a day were thus mindful of the rights and welfare of apprentices. It should satisfy them that the constituted authorities of the commonwealth are now, as it would appear, they always have been, disposed, at all times, to do justice, and be careful of the welfare of apprentices. And that, therefore, it is their duty whenever they are, or suppose they are, aggrieved, or evilly treated, by their masters, to apply to a magistrate, and not attempt by absconding, or by any other misbehaviour, to take the redress of their grievances into their own hands. This is a mode of redress which always does more harm than good. The publication of this section, will not fail to exhibit to masters a true picture of such a person, as the law contemplates is properly qualified to act as a master in Pennsylvania. He must be a person “of good repute” and if he can be had “of the same religious persuasion” as the parent was known or presumed to be. The court to whom the care of orphans is especially consigned, are prohibited from sanctioning a binding to any other person, if such a master may be had.

At the period when this section was enacted, masters and apprentices resided almost always under the same roof, and there was between them much more of the intercourse and feelings, which we have endeavoured to inculcate, of parent and child, than is now customary. May the occasion be embraced, with all delicacy and feeling, to make a few remarks on a subject, of the deepest solicitude, and involving not only the most sacred of all rights, but the most tender and solemn of all feelings. I need hardly say that I mean the subject of *Religion*. If the master and apprentice are of the same “religious persuasion,” there can be no difficulty. The path is clear and straight before them. They may worship in the same church, and the apprentice will thus be more immediately, and constantly under the eye of his master. If it shall be otherwise, it would be desirable that the Master and the “Parent, Guardian, or next friend,” should agree either that the apprentice should go to the same place of worship with his master, or that the parent, &c. would take care that he should go to church or meeting with him. So long as the apprentice can be prevailed upon to continue to go to Sunday School, a certain good will be preserved, by continuing him, either as a scholar or a teacher. He will thus not only be in the way of instruction, and of good, but he will be out of the way of idleness and evil. His ear will not be polluted by profane speaking, nor will his morals be endangered by his becoming a Sabbath breaker.

7. The father of an infant cannot bind him as an apprentice without his consent; and it is necessary that the infant should become a party to, and execute the Indenture. *Ashm.* 123.

8. An Indenture of apprenticeship executed by an infant without

the consent of his parent or guardian, is not binding on the infant. 4 *Watts*, 80.

9. * No agreement whatever will constitute an apprenticeship unless there are Indentures executed. 1 *Botts Poor Laws*, 532.

10. * But a contract to serve for three years, at so much per week, the master agreeing to teach the other a trade, and the latter agreeing if he lost any time to the prejudice of his master, to abate so much per day constitutes an apprenticeship, if the instrument be sealed and stamped. 1 *East*, 31.

11. * A Father cannot bind his infant son an apprentice without his assent, therefore an indenture of apprenticeship executed by the Master and Father but not by the apprentice himself, is held to be invalid. 3 *Barn & Ald.* 584.

12. * So the binding of an apprentice to a Feme Covert is void. 2 *Chitty*, 284.

13. Free negroes or mulattoes can be bound here as servants until twenty-one years of age, but no longer; but those who have been bound in other States, and brought into this State, may be compelled to serve until twenty-eight years old, according to their Indentures. 1 *Yeates*, 368.

14. A person of full age, binding himself to learn a trade, is not subject to the provisions of the act of assembly giving summary jurisdiction in disputes between master and apprentice. 1 *Browne*, 24.

15. A guardian who signifies his assent to the binding of his ward an apprentice, by signing and sealing the Indenture, is not responsible to the master for a breach of the contracts of the apprentice. 2 *Rawle*, 269.

16. It is not necessary that the person who consents as *next friend* to the minor should receive an appointment as such from legal authority. *Ashm.* 27.

17. An Indenture executed by a minor with the consent of his sister as next friend, is valid. *Ib.* [This decision of Judge Hallowell's was confirmed by the Supreme Court on a habeas corpus, in July, 1821.]

18. When the parent of a child lives at a distance, and has long relinquished his protection of the child, a binding by the next friend is good; but the master to whom the child was formerly bound, is *not* such a friend as is within the act of assembly. 1 *Sergt. and Rawle*, 366.

19. An Indenture of apprenticeship is not necessarily invalid, because the father of the apprentice is in full life, and the binding made without his consent. *Ashm*, 71.

20. A mother may bind the children of an habitual drunkard, found so by inquest, and confirmed by the verdict of a jury, to a useful trade or occupation. *Ib.*

21. The sister of a minor is competent under the act of assembly of Sept. 1770, to assent, as his next friend, to binding him apprentice to her own husband. 1 *Sergt. and Rawle*, 191.

22. But such a transaction will be more strictly scanned than where the binding is to a stranger; and if the contract be tainted with fraud or collusion, the apprentice will be discharged. *Ibid.*

23. He will not however, be discharged, of course, where the covenants appear reasonable and proper on the face of the Indenture, especially where the application is not made, till the apprentice has ceased to be a burden. *Ibid.*

24. An Indenture may be valid without any covenant for schooling at all, if it should appear that the education of the apprentice had been sufficiently attended to before. 1 *Sergt. & Rawle*, 191.

25. An Indenture binding an apprentice as a waiter, is good. 1 *Sergt. & Rawle*, 252.

26. One partner has no power to execute an Indenture for his co-partner, and after the death of the partner *executing* the Indenture, the apprentice may be discharged from the service of the survivor. 2 *Bache*, 130.

27. An Indenture of a person actually free, but ignorant of it, is void. 1 *Browne*, 369. N.

28. A writing without seal *is not* an Indenture of Apprenticeship, within the meaning of the act of assembly, even though signed by the parties. 10 *Sergt. & Rawle*, 416.

It not unfrequently happens, that boys are taken as apprentices, without being "bound by Indenture," or by any written agreement, or by an ambiguously expressed, or imperfectly executed, agreement in writing. The inconveniences, the misunderstandings and the losses which have been the results of such agreements, have been so extensively and generally felt, that it is not deemed necessary to expatiate upon or particularly point them out. It is, however, thought proper to notice the subject, that it may act as a beacon and warn inexperienced masters. It may well be questioned, whether a justice of the peace has any authority to interfere between a master and apprentice, except the binding between them is "by Indenture." The second section of the "Act for the regulation of Apprentices," which provides the remedies for misconduct in either of the parties, give the justice no jurisdiction or authority whatever, except to enforce "the covenants in the Indenture between them made." If there are no Indentures between them, whence can the justice derive his authority, and in what manner can he exercise it? The above decision of the Supreme Court in 10 *Sergt. & Rawle*, 416, strongly countenances the doubt here suggested.

If, however, the parties prefer to draw up their own agreements, it is strongly recommended to them to have all the particulars understood between them clearly and distinctly *written* in their agreement, of which each of the parties should have a copy.

29. * Parol evidence of an Indenture not produced, is in general inadmissible. *Burr. S. E.* 735.

* Unless under particular circumstances. *Burr. S. E.* 150.

30. Where an apprentice has not been regularly bound by Indenture, his master cannot support debt against a clergyman who should marry him without consent of his master. 1 *Sm. Laws*, 312.

31. * An Indenture, by which an apprentice was bound for seven years, to serve A. B. for the first four years, and his own father for the last three, to learn two different trades, is a valid indenture. *P B. & C.* 247.

32. An apprentice is not within the meaning of the act of 14th of Feby. 1729-30, entitled "a Supplement to the Act entitled an Act for preventing clandestine marriages" which prohibits Clergymen and others from giving in marriage "indented servants" without the consent of their masters or mistresses. 3 *Rawle*, 305.

33. An Indenture of apprenticeship executed by one of two partners in trade, in behalf of the firm, is void. 1 *Browne*, 73. Appx.

34. An Indenture executed by one as *Master* and *Next Friend* of an apprentice, is void. The master is not *such* a next friend as is contemplated by the act of 29th Sept. 1770. 1 *Sergt. & Rawle*, 366.

35. Aldermen have the same power as justices of peace, in cases of apprentices. 1 *Sergt. & Rawle*, 248.

36. In the binding of an infant as an apprentice by the overseers of the poor, it is not necessary that the infant should join in the indenture. 3 *Sergt. & Rawle*, 158.

37. The general practice is for the next Friend of a minor to express his assent by sealing the Indenture; but it has never been supposed that he thereby rendered himself liable on the covenants of the Indenture. 1 *Rawle*, 191.

38. * A written agreement "to remain with A. B. two years, for the purpose of learning a trade" is not binding, for want of an engagement in the same instrument, by A. B. to teach. 3 *C. & P.* 289.

39. * A By-law, made by a company incorporated to restrain the number of apprentices taken by any of the members is void. 7 *Term*, 543.

OF THE ASSIGNMENT, OR CANCELLING, OF AN INDENTURE.

1. The consent of the parent, or guardian, of an apprentice, as well as that of himself, is necessary to an assignment of an Indenture. 1 *Sergt. & Rawle*, 248.

2. An Indenture of apprenticeship may be vacated by the consent of all the parties to it. 1 *Sergt. & Rawle*, 330.

3. * Apprenticeship is determined by the death of the master. *Burr. S. Cases*, 782.

4 * And by the master telling his apprentice "he might go where he pleased" and giving up his indentures. *Burr, S. C.* 629.

5. Unless the terms of the Indenture extend to the executors or administrators, they have no right to the service of the apprentice, nor to assign him over to a third person. 2 *Bache*, 126.

6. An Indenture cannot be assigned unless it includes assignees. The Sessions or Mayor's Court have no power to decide on the *validity* of an Indenture. 1 *Browne*, 24. 374.

7. Though an indented apprentice is not assignable or transmissible, yet the assignment, as between the old and new master, would be valid, *as a covenant*, for the services of the apprentice; and if the apprentice continued to serve his new master, there would be no failure of the consideration of the assignment. 19 *Johns.* 308.

8. The assent of the parties necessary to give validity to an assignment of an Indenture of apprenticeship, must be certified by the justice; or at least expressed in writing before him, and attached to the instrument at the time of such assignment. Parol proof afterwards will not suffice. 3 *Sergt. & Rawle*, 158.

9. * Where a master receives money of his apprentice who is of full age to vacate his Indenture, the relation is dissolved, although the Indenture remains uncanceled. *Ald. S. Cases*, 32.

10. * The apprenticeship of an *infant* may be dissolved by the consent of all parties concerned. *Burr, S. C.* 766.

11. An Indenture binding an apprentice to a man, his heirs and assigns, without naming executors, cannot be assigned by his executors. 4 *Sergt. & Rawle*, 109.

12. An Indenture of apprenticeship may be vacated by the consent of all the parties to it, and the approbation of a justice of the peace is not necessary. 1 *Sergt. & Rawle*, 330.

13. No arrangement or contract between a master and his apprentice altering the persons to whom an apprentice is bound, can be valid, unless ratified by the consent of the parent, or other person, standing in the place of the parent in writing. *Ash.* 405.

14. So where an apprentice was bound to two co-partners, or the survivor of them, and it was provided by the Indenture, that in case of a dissolution, he was to have the right to elect, or choose, which of the said co-partners he would serve, and afterwards the partnership was dissolved, and one of the partners assigned to the other all his right, title, and interest, in the said indenture, the court *held* that to make the election of the apprentice valid and binding, it must be done with the consent of the parent or guardian; and that the dissolution of the partnership abrogated the Indenture, the parent not consenting to the election. *Ibid.*

It is believed that as a general rule, no better can be laid down by the parties for their government in relation to an Indenture of apprenticeship, than that *no* binding alteration can be made, in the terms, or in the parties, or in *any* of the conditions of the Indenture, in any other way than by the consent of *all* the subscribers to it, and the alteration should be clearly expressed in writing, and the best place to make the writing is on the Indentures.

While on this subject it may be well to suggest, that whenever a change in the master is about to be made—of course with the consent of all the parties—the better way to effect it is, to cancel the existing Indentures, and execute a new one, by the new parties. This course of proceeding, rightly pursued does not leave a loop on which to hang a doubt or cavil.

When the parties from any cause whatever, shall agree to cancel

the Indenture, by which they are bound, it would always be well for the magistrate to note the conditions, if any, on which the Indenture is cancelled, or, if there be no stipulation, to note that the parties mutually release each other from all the duties or claims which had arisen, or might arise, if the Indenture had not been cancelled. The advantage of such a written note is, that it prevents the parties from instituting suits to recover claims, which, however unquestionable, they would have been, if the Indenture had not been cancelled, were understood by the parties, to have been extinguished when the Indenture was declared null and void.

The following form is perhaps all that is required upon an occasion of this kind. It should be written on each copy of the Indenture, and on the margin of the record, which has been made in the magistrate's book of Indentures. Let the names signed on the cancelled Indentures be erased.

July 4th, 1838. All the subscribers to this Indenture personally appear this day before the subscriber, one of the Aldermen in, and for the City of Philadelphia, and desire that it may be, and it hereby is, declared to be, null, void, and of no effect. The parties mutually agree to release each other from all debts, dues, claims, or obligations, which may have arisen out of said Indentures.

Before

A. B.

Ald.

[SEAL.]

OF THE AUTHORITY OF THE MASTER.

1. A master may by law, correct and chastise his apprentice for neglect or other misbehaviour, so that it be done with moderation. 1 *Bl. Com.* 428. But he cannot depute another to give such correction. 2 *Bache*, 134.

2. The master cannot take the apprentice out of the State, where the Indenture was executed, unless the Indenture gives power, or it follows from the nature of the mystery which the apprentice is to learn. 6 *Binney*, 202.

3. The court will discharge, an apprentice for acts of the master, injurious to his mind and morals. 1 *Browne*, 24.

4. An apprentice cannot maintain an action against his master to recover compensation for extra work done by him for the latter during the term of the apprenticeship; although the work was done upon the express promise of the master to pay for it. 1 *Whart.* 113.

In very many Indentures provision is made, that the master shall pay to the apprentice, his "Parent, Guardian, or next friend," a certain sum of money periodically, for clothing, &c. at certain fixed times. It has been repeatedly ruled in the Mayor's Court of the city of Philadelphia, although no publication has been made of such a decision, that the refusal or neglect of the master to make the payments required at the times stipulated in the Indenture, is such a breach of the covenants of the Indenture, as warrants its being declared of no further binding effect.

5. Parents, masters, and other persons having authority in *foro domestico*, may give reasonable correction to those under their care, and if death ensues without their fault, it will be no more than acci-

dental death. But if the correction exceeded the bounds of due moderation, either in the measure of it, or in the instrument made use of for that purpose, it will be either murder or manslaughter, according to the circumstances of the case. *Foster*, 262. 1 *Rus.* 670.

6. Thus, where a master struck a child, who was his apprentice, with a great staff, of which he died, it was ruled to be murder. 1 *Hale, P. C.* 474.

7. Where a master had employed his apprentice to do some work in his absence, and on his return found it had been neglected, and thereupon threatened to send the apprentice to bridewell, to which the apprentice replied, "I may as well work there, as with such a master;" upon which the master struck the apprentice on the head with a bar of iron, which he had in his hand, and the apprentice died of the blow, it was held murder; for if a father, master, or schoolmaster, correct his child, servant or scholar, it must be with such things as are fit for correction, and not with such instruments as may probably kill them; and a bar of iron is not an instrument of correction. 1 *Russell*, 671.

This case is an awful illustration of the effects of provoking words upon a passionate man. He strikes the offender dead at his feet, and himself suffers an ignominious death as a murderer! Can such lessons be read in vain? It is hoped not.

Having stated the law between master and apprentice; expounded and illustrated it by the decisions of judicial authorities; given the opinions of able jurists; and made preliminary and occasional remarks on the relationship and mutual obligations of the parties, I might here without impropriety, conclude this essay. It has, however, occurred to me, that the junior portion of those to whom it is dedicated may be benefitted, and cannot be injured, if the writer should submit a few thoughts for their more immediate consideration.

HINTS ADDRESSED TO APPRENTICES.

1. **INDENTURES.** If the apprentice would occasionally read his indenture, he would find in it an excellent summary of the several duties he is bound to perform toward his master, which, by such readings would be impressed upon his memory, and influence his conduct. Perhaps it would be well, for the purpose here stated, if every apprentice was furnished with a copy of the covenants of his Indenture, printed on a card, so that it could be conveniently carried in his pocket and would not easily wear out. If every "Parent, Guardian, or Next Friend," who is about to bind an apprentice would, before the binding, carefully and affectionately explain to the youth the nature of the obligations he is about to take upon himself; the duties which, in his new situation, he would be expected to discharge; and give him tolerably correct notions of the

change, about to take place in his whole manner of living; and the behaviour and general course of conduct which, in him, would best promote his comfort, his happiness, and his future welfare, the impression thus early made upon the apprentice, by such discourses, would, in all human probability, have the best influences on his whole future conduct and life.

2. **OVERWORK.** It has become a very general practice with masters, in several branches of business, to allow their apprentices overwork. This is mutually beneficial to the parties—shall I take occasion here to repeat, that all benefits are, and of necessity must be mutual—when the money received for the overwork is properly appropriated by the apprentice. If the apprentice would keep not only a regular account of his earnings, in this way, but also a regular account of how he expends the money he receives to be exhibited, when asked for, by his master, “parent, guardian, or next friend,” he would be almost certain to appropriate his money to good purposes. It would be well to learn early habits of economy as to *time* and *money*, and to keep an account how both are spent. The apprentice must always bear in mind that it is not in his power to *enforce* payment for overwork. He must make his whole conduct acceptable to his master to induce him to pay for the overwork. The overwork is regarded as a premium for good behaviour as much as a payment for the work done.

3. **SCHOOLING.** The master is frequently bound to give his apprentice a certain quantity of schooling, and this schooling is frequently, evening schooling. It sometimes, indeed too often, happens, that the apprentice does not go to school, but goes elsewhere. By such conduct he not only loses the advantages to be gained by attending school, but he also gets into bad company, and acquires habit of staying out late in the evening. These are both evils. The precious time thus lost never can be recalled, and the habits thus acquired may injuriously affect his whole future conduct and character. If teachers of evening schools would make it a rule always to give tickets to those who attend, and the master would require the tickets from the apprentice, an effectual stop would be put to such misconduct, as is here complained of. I would earnestly and affectionately beseech apprentices, to be punctual in their attendance at school, from the time it opens until it closes, whenever they have a right to go; and I would pray them, to do all in their power to improve the opportunities for learning, thus bestowed upon them. Be *sure* to learn to read and write, and as much more as possible.

4. **LEARNING YOUR TRADE.** To accomplish this, industry is indispensable. Attend carefully to the instructions which are given, and be always thankful to whoever may thus instruct you. Attend to whatever you are told to do, and *do one thing at a time*. That is, let your thoughts, your whole attention, be devoted to the work at which your hands are employed. Thus you will not only do your work better, but you will do more of it, than those who are inattentive and diverting their thoughts from the job they are work-

ing upon. "How do you get through so much business?" said a statesman to the Pensionary De Witt, "by doing one thing at a time," was the answer. Remember this! In all trades, as a journeyman a good workman can certainly calculate upon constant employment and the highest wages. As an employer those who know their business best will assuredly command the best jobs. It is only by attention as an apprentice, that you can acquire the skill and knowledge which will make you a good workman.

5. TEMPER. A cheerful and obliging disposition, a wish to make yourself useful, and a readiness to do what you are required to do, will make you beloved by all with whom you have intercourse, and they will be glad to do services and give instructions to one who thus governs his temper. Such behaviour, independent of the great advantages, it will be of to you, while an apprentice, will lay the foundation of much future happiness, and greatly contribute to your success and prosperity through life. A bad temper is the bane of social and individual happiness.

6. A PROPER GOVERNMENT OF THE TONGUE, is of incalculable advantage. I need not say that you should never, in any company, upon any occasion, or under any circumstances, take the sacred name of God in vain, or be tempted, profanely, to curse or swear. These are high offences against the laws of God and man; they offend the ears of all pious and well disposed persons, and excite disgust and dislike against the offender. Swear not at all, nor curse, nor indulge thy tongue, in evil speaking or slandering. I trust also that you have too much respect for yourself, and for truth, ever to be guilty of the meanness of Lying. If you have done wrong, honestly own it, and you will fare better and be more respected, than if you prevaricate, or tell a lie. Having determined not to lie to shield yourself, you cannot be expected to be guilty of such an offence to hide the misconduct of others. A saucy tongue—a tale-bearing tongue—a mischief-making tongue—are mighty evils; they bring their owner into much trouble, and make him many enemies. I pray you not to carry so dangerous a two-edged sword. It *may* wound others, but it is *sure* to wound yourself.

7. READING. Every apprentice has some spare time. It cannot be better or more agreeably, or more profitably, employed, than in reading. You cannot read too much, if you read in a proper spirit, and with a wish to be instructed. If you have not, or cannot in your master's or parent's family, procure such books as you wish, *the Apprentices' Library*, in this city, will supply you with abundance and of the best kind. Ask your master, and he will tell you how you may obtain books, as many as you want, from this very valuable institution. Be careful to keep them clean, and to return them punctually, and you will always be furnished with as many books as you want, and just such as you wish, and such as are best for you. The persons who established this Library are not only entitled to the gratitude of apprentices and the thanks of the community, but they must, and do, feel, that they have done much for the rising generation, the future men of America. The estab-

lishment of similar useful institutions in all our towns, would be of incalculable advantage. Where no such Library exists, a well behaved, industrious apprentice, will always ensure so much favor and respect, that persons who have books will take a pleasure in lending them to him.

BAD HABITS—STRONG DRINK. I believe every hint here submitted for your consideration is important, and that your attention to them and your following the advice accompanying them, would mainly contribute to your comfort, and to your obtaining information and becoming skilful in your business while you are an apprentice, as well as to your future usefulness, respectability and happiness. Remember, young men, that the writer of this advice is as unknown to you, as you are to him, and that he neither has, nor can have, any other motive or object than the promotion of your welfare. Believe me, this will be essentially, and so long as you live, promoted by your being always on the watch to avoid the acquiring of *bad habits*.

Young people can have no clear idea with what a soft and stealthy pace and how, almost imperceptibly, habits are acquired. In the first instance, they have, or seem to have, no more force or power to bind than a spider's thread; but these threads are wound around you, as you may have seen a spider wind them round a fly, until these most attenuated and fragile threads have acquired the resistless force of a cable and you are, like the captive fly, utterly unable to resist, and are delivered up, bound hand and foot, to become the dupe or the victim of the habit thus acquired.

The most simple and sublime, the most beautiful and universal of all prayers, is that which we have been taught by the Redeemer of the world to offer up to his Father and "Our Father, who art in Heaven;" and surely no part of that divine prayer should impress us more deeply, or comes more home to our bosoms and business, or should keep us so constantly on the watch, as when we pray, "Lead us not into Temptation." There are few who can successfully resist temptation, and therefore the mass of mankind find safety only in flight. If these truths could at all times be present to our minds, still I would call upon young men to keep them still more vividly, powerfully and influentially before them, when they are tempted in the shape of *spirituous liquors*.

Do not taste them—do not look upon them with an eye of desire. Those who do drink strong liquors, those with whom it has already become a habit will treat you—they will use all possible persuasion—they will coax you and taunt you, and use all means, fair and foul, to induce you to touch and taste this poison, to mind, to morals, to character, and even to physical strength; but as you love virtue and happiness, as you hate vice and degradation, resist and taste it not. It is better to resist and to encounter the scoffs and scorn of the thoughtless and the vicious, than to do that which may embitter your whole future life, consign you to poverty and infamy, and disgrace your family and friends. I take the flattering unction to my soul that some of my youthful readers will listen to my warn-

ings and turn with disgust from spirituous liquors. If the publication of this Essay shall be the means of preventing one apprentice from becoming a sot and a wine-bibber, it will be a rich reward to the writer. These admonitions are penned with a fervent and an anxious hope that they may be read in the spirit in which they are written, and thus become acceptable and useful.

A FEW WORDS TO PARENTS &c. Having, in page 28-29, ventured a few words of advice to Parents, Guardians and next Friends, who are about to bind out apprentices, I feel emboldened to submit a few thoughts for the consideration of those who have already bound out their children or wards.

Young people, introduced as apprentices usually are, into families, with whom they have had no previous acquaintance, will necessarily meet with much that is strange and unexpected, and not a little that will hurt their feelings and make them uncomfortable. Attentions to which they had been accustomed will no more be paid, and they will look in vain for that softness of manner, tone and language, which they used to hear, from the lips of near and dear relations. They have made new and important engagements. They have entered upon the business of the world and must expect to be galled by its roughnesses and made acquainted with its hardships. These things, however, are but for a season, and are calculated to prepare young men for the buffetings and hard-knocks which every one may reasonably expect in his efforts to establish character and acquire property.

Some boys have a buoyancy of spirit and elasticity of mind which bounds over all obstacles and clears all difficulties. These boys are highly favoured in health and disposition. But there are others, whom it is also necessary to put out to learn trades, who are but ill adapted and ill prepared to meet the cuffs and sneers of the world. This is especially the case with lads of dispositions naturally timid, and who have been brought up chiefly among females—it is eminently the case with those who have delicate constitutions, and have been tenderly brought up by widowed mothers. Boys of such various educations, temperaments, dispositions and physical powers as may be found among the thousands who are “bound by Indenture,” even in this Commonwealth, will be more or less sensibly affected by the great change which, of necessity, in so many things, takes place when they are put out apprentice. Most of them will have grievances to relate and complaints to make, and will naturally make them to those to whom they look for consolation, advice and redress.

The Parent, &c. cannot, if he would, nor would it be desirable if he could, turn a cold ear to these representations. Let them be heard with affectionate patience and followed by soothing and sensible advice. Let it be represented to them that the evils of which they complain are common to most apprentices, and will be but of

short duration—that they are daily acquiring a knowledge of their trade, daily making themselves more useful, and by proper behaviour daily gaining the good will of their masters:—that every day brings them a day nearer to the expiration of their Indentures, and consequently to the time when all the skill and information they have acquired may be used *wholly* for their own benefit, and that the rebuffs and unkindness they meet with, will but make them, at no distant day, more happy and comfortable, and better qualified to make their way in the world. While you do not discourage them from unburthening their minds, be especially careful not to cherish in them a repining or complaining spirit, and make them satisfied that if they shall be wronged, or injustice done them, that you will to the utmost of your means, strain every nerve to redress their wrongs, and have justice done them.

The manner in which parents, &c. listen to, and advise with, apprentices, is of the utmost moment. Let parents and guardians and next friends, be fully impressed with their duties and responsibilities, and reflect frequently how much good, or how much evil, may be caused by their deportment, and we feel assured that they will act advisedly and as becomes them, and thus confer blessings on those, whom a wise providence has committed to their care, and, in return, their latter days will glide away tranquil and happy amidst the prayers and blessings of those whom they had patiently and wisely instructed.

AT PARTING, A FEW WORDS TO MASTERS. Remember, at all times, that you are not only the Master, but that you are also the Parent, Guardian and next friend of your apprentices. Do not permit them to be wronged, imposed upon, or dealt with unjustly. More especially, when poor children, when fatherless children, when those who have none to help them are confided to your care, superintend them not only with a watchful eye, but with a feeling heart; so shall your own conscience speak peace. Your apprentices will speak well of you, and your neighbours will speak well of you, and your friends will multiply, and peace and plenty shall be within your walls, and you shall have yet a richer reward—“and *thy* Father who seeth in secret, himself, shall reward thee openly.”

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